

Message Text

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ORIGIN EB-11

INFO OCT-01 EUR-25 ISO-00 CAB-09 CIAE-00 COME-00 DODE-00

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CAB - MR. MURPHY

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FM SECSTATE WASHDC

TO AMEMBASSY ROME IMMEDIATE

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E.O. 11652: N/A

TAGS: ETRN, IT

SUBJECT: CIVAIR - SEABOARD CARGO RATES

REF : ROME 12391

1. WE AGREE WITH SUGGESTION (REFTEL) THAT OBJECTIVE NOW SHOULD BE TO RESOLVE RATE SITUATION ON BASIS WHICH SERVES BEST INTERESTS OF ALL CONCERNED. THEREFORE, WE PROPOSE FOLLOWING STEPS:

A. EMBASSY SHOULD CONFIRM TO GOI OUR WILLINGNESS TO ADDRESS RATE ISSUE IN TANDEM WITH UPCOMING REVIEW OF PASSENGER CAPACITY IN ROME, SHOULD GOI AT THAT TIME STILL SO DESIRE.

B. ON CONDITIONS OUTLINED BELOW (AND IN ORDER PROTECT GOI AND ALITALIA INTERESTS IN INTERIM), USG WOULD RECOGNIZE CIVILAVIA'S COPY TO EMBASSY OF SEPT. 19 NOTE TO SEABOARD. WE WOULD IN THIS INSTANCE ACCEPT THIS COPY AS LIMITED OFFICIAL USE

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CONSTITUTING NOTICE TO USG THAT GOI IS DISSATISFIED WITH

DISPUTED RATES (IN INFORMING GOI OF OUR WILLINGNESS TO OVERLOOK THIS TECHNICAL LAPSE, WE SHOULD RESERVE OUR RIGHT TO REQUIRE NOTICE THROUGH DIPLOMATIC CHANNELS IN ALL FUTURE CASES). WE WOULD CONSIDER THE EFFECT OF OUR ACCEPTANCE IN PRINCIPLE OF SEPT. 19 NOTE AS ENABLING GOI TO INVOKE ARTICLE 10(G), AND UNDER CIRCUMSTANCES WOULD INTERPRET THIS PROVISION AS BEING APPLICABLE FOR GOI ON NOV. 19, 1973. THE CONDITION WHICH WE WOULD IMPOSE ON THE ABOVE PROPOSAL WOULD BE THAT GOI WOULD LET NEW TARIFF REMAIN IN EFFECT IN PRACTICE PENDING CONSULTATIONS CITED 1(A) AND WOULD NOT ACT AGAINST THE RATES IN INTERIM UNLESS (1) IT BECOMES APPARENT THAT THESE RATES ARE ADVERSELY EFFECTING ALITALIA'S INTERESTS, AND (2) USG IS ACCORDED OPPORTUNITY TO CONSULT PROMPTLY ON RATE ISSUE. EMBASSY SHOULD STRESS TO GOI THAT OPERATIVE FACTOR HERE, FOR US, IS THAT USG CONSIDERS RATES TO BE LEGAL AT BOTH ENDS OF US-ITALY MARKET, AND THERE ARE NO GROUNDS IN US LAW UNDER WHICH WE COULD REQUIRE SEABOARD TO WITHDRAW THEM. IN THIS REGARD, EMBASSY SHOULD POINT OUT TO GOI THAT ALMOST IDENTICAL RATES HAVE BEEN APPROVED BY FRENCH, AND SIMILAR ONES APPROVED BY DUTCH, WEST GERMANS, BELGIANS AND SWISS. IN EACH INSTANCE, FOREIGN AIRLINES AND GOVERNMENTS WERE APPREHENSIVE ABOUT EFFECTS OF PROPOSED RATES, AND WERE INITIALLY RELUCTANT TO PERMIT THEM TO GO INTO EFFECT. IN PRACTICE, ALL FOUND THAT LIFTS UNDER THESE RATES, WHICH ARE SOLD ONLY INFREQUENTLY (NONE YET IN ITALY) HAVE NOT ADVERSELY EFFECTED INTERESTS OF NATIONAL AIRLINES. THEREFORE, IT MIGHT BE USEFUL IN RESOLVING PROBLEM FOR CIVILAVIA TO DISCUSS WITH CIVAIR AUTHORITIES IN FOREGOING COUNTRIES THEIR ACTUAL EXPERIENCE WITH HIGH-WEIGHT-BREAK RATES.

C. IN FOREGOING SITUATION, SEABOARD WOULD AT LEAST BE GIVEN PERIOD UNTIL CAPACITY TALKS CONVEINE IN ROME TO TEST NEW RATES IN MARKET PLACE. THIS PERIOD COULD, IF NECESSARY, BE CUT SHORT BY CIVILAVIA ON BASIS OF (1) DEMONSTRABLE UNDUE EFFECT ON ALITALIA, AND (2) PRIOR CONSULTATION. IN SUM, GOI WOULD HAVE GUARANTEE THAT LEGITIMATE INTERESTS COULD BE PROTECTED IN SHORT-TERM AS WELL AS AGREEMENT THAT CONSULTATIONS WILL BE HELD LIMITED OFFICIAL USE

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SOON TO DISCUSS ANY LONG-TERM CONCERNS ABOUT RATES.

2. FYI: SEABOARD SUPPORTS FOREGOING PROPOSAL. END FYI.

3. ALTERNATIVE TO FOREGOING APPEARS TO BE REVERSION TO STRICT CONSTRUCTION OF BILATERAL, WITH USG SUPPORTING VIEW THAT IT STILL REMAINS FOR MFA TO NOTIFY US FORMALLY OF GOI DISSATISFACTION WITH RATES PURSUANT TO ART. 10(E),

WHICH WE CONSIDER LEGAL IN BOTH US AND ITALY (AND WHICH COULD REMAIN LEGALLY IN EFFECT FOR SIXTY DAYS FOLLOWING GOI NOTIFICATION). PRESUMABLY SUCH NOTIFICATION WOULD ALSO CONTAIN REQUEST FOR CONSULTATIONS.

4. IN REGARD TO FILING OF RATES, EMBASSY MAY WISH TO SUGGEST THAT CIVILAVIA SIMPLY TIGHTEN ITS SYSTEM, PERHAPS ALONG LINES USED BY CAB (DESCRIBED IN CODE OF

FEDERAL REGULATIONS 221), TO MAKE AIRLINES RESPONSIBLE FOR PROOF OF COMPLIANCE WITH PROVISIONS OF BILATERAL. THERE IS NO RPT NO UNDERTAKING BY GOVERNMENTS UNDER BILATERAL TO SCREEN OR CONTROL RATES, AND WE CAN SEE NO REASON FOR BURDENING DIPLOMATIC CHANNELS WITH ROUTINE RATE FILING PROBLEMS. RUSH

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